

Please amend the claims, as follows:

79. (Second amendment) The polypeptide of claim 78, which has a conservative amino acid substitution [within] at a residue selected from the group consisting of residues 65-157 and 161-189 of the amino acid sequence [65-194] of Figure 7.

## **REMARKS**

Claims 44-79 and 81-91 are pending. Claim 92 is herewith added. Thus, claims 44-79 and 81-91 remain active in this case and entry of new claim 92 is requested. Support for new claim 92 can be found, *inter alia*, in the substitute specification at page 5, lines 21-35.

### **I. Substitute Specification**

Applicants thank the Examiner for entering the Substitute Specification filed October 6, 1999.

### **II. Double Patenting**

Applicants acknowledge the examiner's objections for double patenting and will attend to such issues upon indication that subject matter would be allowed pending resolution of this provisional rejection.

### **III. Rejections under 35 USC § 112**

The Examiner rejects claim 79 under 35 USC § 112, second paragraph, contending that it is unclear because a single amino acid substitution could not be from two different regions at the same time. In response, applicants have amended claim 79, pursuant to the examiner's suggestion. In view of this amendment, applicants request the examiner to withdraw the rejection of claim 79.

The examiner applies the previous rejection of Claims 45-46, 48-88 under 35 USC §112, first paragraph, to the pending claims, for the reasons set forth in Paper No. 23. The Examiner explains her position to be that the specification does not provide for KGF polypeptides that differ in their ability to stimulate BALB/MK cells. She concludes that the "claims are directed to subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s) at the time the application was filed, had possession of the claimed invention, absent evidence to the contrary." (Office Action at page 4). She further explains that this rejection is being maintained because applicants failed to address this ground of rejection in the response of Paper No. 25.

Applicants respectfully traverse this rejection and direct the Examiner's attention to the explanations provided in Paper No. 25, at page 17. Specifically, applicants acknowledged the Examiner's confusion about the functional language in the present claims. They explained that they do not mean that the skilled artisan must match a specific sequence with a specific activity, as the examiner has implied. The various functional recitations in claims 46-49, for instance, are simply alternative definitions within the scope of the term "has preferential mitogenic activity on cells of epithelial origin."

As applicants have previously shown, the written support for the functional recitations is in original Table I-2. Applicants simply do not understand how applicants' "possession of the claimed invention" can be challenged based upon the written description set forth above and in view of the Examiner's acknowledgment that applicants were in possession of a set of truncations. Applicants believe that the claims meet all requirements under the law and that the Examiner's rejection is based upon a misunderstanding.

Applicants take this opportunity to correct a misstatement made in Paper No. 25 at page 17. Specifically, applicants stated that the amendment to recite "epithelial cell specificity...changes the meaning of original language used, *i.e.* preferential mitogenic activity on cells of epithelial origin." (emphasis added). Clearly, applicants meant to say that the amendment doesn't change, the original meaning of preferential mitogenic activity on cells of epithelial original. Although

applicants other remarks in Paper 25 should have highlighted this error, applicants wish to eliminate any possible confusion caused by their typographical error. As applicants have previously stated "epithelial cell specificity" and "preferential mitogenic activity on cells of epithelial original" convey the same characteristic. The change was made simply to comply with the Examiner's suggestion and move the case to allowance.

### CONCLUSION

In view of the above explanations and amendment made pursuant to the Examiner's suggestion, applicants assert that the present claims are in condition for allowance. Early notification of allowability is therefore respectfully requested.

Respectfully submitted,

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Date

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